IN THE HIGH COURT OF CHHATISGARH JUDICATURE AT BILASPUR

Misc. Civil Case No. .....41.....of 2005

Single Bench

APPLICANT :-M/S Sinha Enterprises
(Govt. Contractors & Engineers)
HO-Bhagat Singh Colony ,
PO-Singrauli ,Distt-Sidhi(M.P)
Through its Constituted Attorney Shri D.K. Sinha

Versus

RESPONDENTS :-1. South Eastern Coalfields Limited
(A subsidiary of Coal India Limited)
Kusmunda Project ,PO-Kusmunda ,
Distt-Korba (C.G) Pin- 495454
Through its Chief General Manager

2. Chairman Cum Managing Director
South Eastern Coalfields Limited
HO-Seepat Road ,PostBox-60,
Bilaspur (C.G)

P.R. No. 5125/05 Presented by Shri Manmohan Nadi dated 21.12.05

Application under Section 11 of the Arbitration and Conciliation Act 1996 for Appointment of Sole Arbitrator
(Claim Amount Rs. 98,92,374.67 + interest)

98

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.C.C. 41/2005 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

30/09/2005: -

M.C.C. No.41 of 2005:

Heard Ms. Sharmila Singhai learned counsel for the applicant and Mr. J.A. Lohani learned counsel for the respondents.

This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator to decide the disputes between the petitioner and the respondent No.1/Company arising out of the agreements dated 17/10/2002, 14/12/2002, 21/01/2003, 25/02/2003, 10/03/2003, 12/03/2003, 19/03/2003, 20/03/2003, 26/03/2003, 23/06/2003, 03/07/2003 and 21/07/2003 for execution of various civil works at Kusmunda project of respondent No.1.

In para 6.7 of the application it is stated that in the note appended to the General terms and conditions of the contract it is stated that in case of any ambiguity, the civil engineering manual will be referred to and the provisions in civil engineering manual shall prevail upon and Clause 14 of the civil engineering manual provides for arbitration of disputes between the parties by sole arbitration of a person appointed by the Chairman-cum-Managing Director of respondent No.1/Company.

The respondents in their reply have stated in para 4 that the civil engineering manual cannot be pressed into service and even if it is held that arbitration clause contained civil engineering manual is applicable to the contract between the parties, then also agreed appointment

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.C.C. 41/2005 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

procedure in clause 14 of the civil engineering manual is that the Chairman-cum-Managing Director is to appoint an arbitrator and if he fails to perform his function, then the Court by directing him to take necessary measures for appointment of an arbitrator in accordance with the arbitration agreement. In para 6 of the reply, the respondents, however, have not disputed that the Chief Justice has jurisdiction to entertain and decide the request.

Having heard learned counsel appearing for the parties, I find that in the case of **Datar Switchgears Ltd. Vs. TATA Finance Ltd. and another, (2000) 8 SCC 151**, the Supreme Court has held that so far as Section 11(6) of the Arbitration and Conciliation Act, 1996 is concerned, if one party demands the opposite party to appoint an arbitrator and the opposite party does not make an appointment within thirty days of the demand, the right to appointment does not get automatically forfeited after expiry of thirty days. But if the opposite party does not make any appointment within thirty days of the demand or even thereafter and the opposite party files an application under Section 11 of the Act making a request to the Chief Justice to make appointment, the right of the opposite party to make appointment under the agreed procedure ceases.

In the present case, it is stated in para 6.8 of the application that the applicant made a demand to Chairman-cum-Managing Director of respondent No.1 on 18/11/2004 for appointment of an arbitrator under Clause 14 of the civil engineering manual and yet the Chairman-cum-Managing Director did not make appointment of an arbitrator and in the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.C.C. 41/2005 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	circumstances the applicant filed the application making a request to the Chief Justice to appoint an arbitrator. In view of the said decision of the Supreme Court **Datar Switchgears Ltd. Vs. TATA Finance Ltd. and another** (supra) the right of respondent No.2 to make appointment of an arbitrator as per the agreed procedure laid down in Clause 14 of the civil engineering manual ceases as soon as the applicant file the application before this Court and it is now for the Chief Justice to make appointment of an arbitrator. For the aforesaid reasons, I appoint Hon'ble Shri Justice A.S.V. Moorthy, (Retd.) as an arbitrator to decide the disputes in this case, subject to his consent. I hope that the arbitrator will hold the arbitration at Bilaspur for the convenience of the parties. Parties are entitled for certified copy of this order. **Sd/-** **Chief Justice**	